

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the First Amended
Accusation Against:**

Michael Anthony Palmer, M.D.

Case No. 12-2011-218642

**Physician's and Surgeon's
Certificate No. G 65321**

Respondent

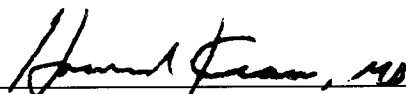
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 15, 2016.

IT IS SO ORDERED: June 15, 2016.

MEDICAL BOARD OF CALIFORNIA



**Howard Krauss, M.D., Chair
Panel B**

1 KAMALA D. HARRIS
Attorney General of California
2 VLADIMIR SHALKEVICH
Acting Supervising Deputy Attorney General
3 DEMOND L. PHILSON
Deputy Attorney General
4 State Bar No. 220220
1300 I Street, Suite 125
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
12 Against:

13 **MICHAEL ANTHONY PALMER, M.D.**
2321 Harrison Avenue
14 Eureka, CA 95501

15 Physician's and Surgeon's Certificate No. G 65321

16 Respondent.

Case No. 12-2011-218642

OAH No. 2015041189

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
22 Board of California. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Demond L.
24 Philson, Deputy Attorney General.

25 2. Respondent Michael Anthony Palmer, M.D. ("Respondent") is represented in this
26 proceeding by attorney Michael W. Morrison, Esq., whose address is: Janssen Malloy LLP,
27 730 Fifth Street, Eureka, CA 95501.

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3. On or about March 20, 1989, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 65321 to Michael Anthony Palmer, M.D. ("Respondent"). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 12-2011-218642, and will expire on July 31, 2016, unless renewed.

JURISDICTION

4. Accusation No. 12-2011-218642 was filed before the Medical Board of California (Board), Department of Consumer Affairs, on or about October 30, 2013, and First Amended Accusation No. 12-2011-218642 was filed on or about October 8, 2014, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on November 6, 2014. Respondent timely filed his Notice of Defense contesting the Accusation and the First Amended Accusation.

5. A copy of the First Amended Accusation No. 12-2011-218642 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 12-2011-218642. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order (Stipulation.)

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. 12-2011-218642, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent acknowledges that cause exists to discipline his California physician's and surgeon's certificate pursuant to Business and Professions Code sections 2227 and 2234 (b).

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. This Stipulated Settlement and Disciplinary Order, including the attached First Amended Accusation, is intended by the parties herein to be an integrated writing representing

1 the complete, final and exclusive embodiment of the agreements of the parties in the above-
2 entitled matter.

3 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
5 signatures thereto, shall have the same force and effect as the originals.

6 16. In consideration of the foregoing admissions and stipulations, the parties agree that
7 the Board may, without further notice or formal proceeding, issue and enter the following
8 Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 IT IS HEREBY ORDERED THAT Respondent Michael Anthony Palmer, M.D., as holder
11 of Physician's and Surgeon's Certificate No. G 65321, shall be and hereby is publicly
12 reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4) as
13 follows:

14 "Respondent's failure to maintain adequate documentation of two patient's pre-operative
15 History and Physical was inappropriate."

16 1. **PROFESSIONALISM PROGRAM (ETHICS COURSE)**. Within 60 calendar
17 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
18 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
19 Respondent shall participate in and successfully complete that program. Respondent shall
20 provide any information and documents that the program may deem pertinent. Respondent shall
21 successfully complete the classroom component of the program not later than six (6) months after
22 Respondent's initial enrollment, and the longitudinal component of the program not later than the
23 time specified by the program, but no later than one (1) year after attending the classroom
24 component. The professionalism program shall be at Respondent's expense and shall be in
25 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

26 A professionalism program taken after the acts that gave rise to the charges in the
27 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
28 or its designee, be accepted towards the fulfillment of this condition if the program would have

1 been approved by the Board or its designee had the program been taken after the effective date of
2 this Decision.

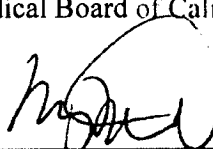
3 Respondent shall submit a certification of successful completion to the Board or its
4 designee not later than 15 calendar days after successfully completing the program or not later
5 than 15 calendar days after the effective date of the Decision, whichever is later.

6 2. **VIOLATION OF THIS AGREEMENT.** Failure to fully comply with any term
7 or condition of this agreement is unprofessional conduct in violation of Business and Professions
8 Code section 2234. If Respondent violates this agreement in any respect, the Board may file an
9 accusation and, after a hearing, discipline Respondent's license for unprofessional conduct in
10 violation of section 2234.

11 **ACCEPTANCE**


12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Michael W. Morrison, Esq.. I understand the stipulation and the
14 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
15 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
16 bound by the Decision and Order of the Medical Board of California.

17
18 DATED: 4/28/16


MICHAEL ANTHONY PALMER, M.D.
Respondent

20 I have read and fully discussed with Respondent Michael Anthony Palmer, M.D. the terms
21 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
22 Order. I approve its form and content.

23
24 DATED: 04.28.16


MICHAEL W. MORRISON, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 5/2/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
VLADIMIR SHALKEVICH
Acting Supervising Deputy Attorney
General



DEMOND L. PHILSON
Deputy Attorney General
Attorneys for Complainant

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stipulated settlement and disciplinary order.docx

Exhibit A

First Amended Accusation No. 12-2011-218642

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2 JANE ZACK SIMON
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the First Amended Accusation
12 Against:

Case No. 12-2011-218642

13 **MICHAEL ANTHONY PALMER, M.D.**
2321 Harrison Ave.
14 Eureka, CA 95501

FIRST AMENDED ACCUSATION

15 Physician and Surgeon's Certificate
16 No. G65321

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer, Complainant, brings this First Amended Accusation solely in
22 her official capacity as Executive Director of the Medical Board of California, Department of
23 Consumer Affairs. On March 20, 1989, the Medical Board of California issued Physician and
24 Surgeon's Certificate Number G65321 to Michael Anthony Palmer, M.D. ("Respondent"). This
25 certificate will expire on July 31, 2016, unless renewed.

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JURISDICTION

2. This First Amended Accusation is brought before the Medical Board of California ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

3. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

4. Section 2234 of the Code, states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon."

5. Section 2261 of the Code states: “Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.”

6. Section 2266 of the Code states: AThe failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

FACTS RE: PATIENT S.M.

7. Patient S.M., a 62 year old female, was referred to Respondent by her primary care physician for assessment of a possible hernia. S.M. presented to Respondent's medical office in Eureka, California on November 24, 2009, and was examined by Respondent's physician assistant, who documented clinical information about S.M. in the medical record. The record contains a diagram prepared by the physician assistant that describes S.M.'s "baseball-sized non-incarcerated ventral hernia" as being located above the umbilicus and below the xiphoid process. Additional entries in the medical record bearing that date and also authored by Respondent's physician assistant state that the risks of surgical hernia repair were explained to S.M. and accepted; surgery was scheduled. Respondent did not see or examine S.M. at this office visit to confirm his physician assistant's findings and made no entries in S.M.'s chart for this date. Respondent did not see or examine S.M. at any time prior to the date of the surgery.

8. S.M.'s medical record from the hospital where her hernia repair surgery was performed contains a transcription of a purported physical examination of S.M. dictated by

1 Respondent on January 12, 2010. In a subsequent interview with Board investigators Respondent
2 acknowledged that he did not see S.M. at any time before the morning of the January 13, 2010,
3 surgery.

4 9. Respondent's dictated operative report indicates he performed a "mesh repair of
5 incarcerated ventral, incarcerated umbilical hernia and incarcerated epigastric hernia" on S.M. on
6 January 13, 2010.

7 10. S.M. was first seen post-operatively by Respondent's physician assistant in
8 Respondent's medical office on January 22, 2010. In a letter to S.M.'s primary care provider,
9 Respondent's physician assistant writes that about one-third of the surgical staples were removed
10 at this visit and that S.M. is doing "exceptionally well." Respondent did not see or examine S.M.
11 at this office visit.

12 11. S.M.'s second post-operative visit was on February 12, 2010. S.M. again saw
13 Respondent's physician assistant, who made entries in S.M.'s medical record documenting SM's
14 concern about a "bulge" just above the surgery site. S.M. complained that this was the same
15 condition she was experiencing before the surgery. Respondent did not see or examine S.M. at
16 this office visit and made no chart entries regarding her care for this date.

17 12 On July 20, 2011, S.M. consulted with another surgeon about the bulge in her
18 abdomen. This surgeon found "an approximately 4 cm palpable hernia mass in the mid-
19 epigastric about halfway between the xiphoid and the umbilicus; this is about 5 cm above her
20 prior incision from last year." S.M. underwent a surgical repair of a large ventral hernia by this
21 second surgeon soon thereafter. The operative report from this procedure makes no mention of
22 encountering any mesh from Respondent's prior repair effort. S.M. made an uneventful recovery
23 from this second surgery.

24 **FIRST CAUSES FOR DISCIPLINE**

25 (Unprofessional Conduct/Gross Negligence)

26 13. The allegations of paragraphs 7 through 12 above are incorporated herein by reference
27 as if fully set forth.
28

1 14. Respondent is subject to disciplinary action under section 2234(b) and 2234 by reason
2 of the following acts or omissions:

3 a. Respondent failed to identify and correctly repair SM's hernia of primary
4 concern--described by his physician assistant as a baseball-sized hernia located in the supra-
5 umbilical area at the midline and as "not incarcerated." Respondent did not examine and consult
6 with S.M. prior to surgery to ascertain and understand the location of the hernia to be repaired,
7 and he indicated in his operative report that he repaired three incarcerated hernias in the umbilical
8 area.

9 b. Respondent failed to review and confirm his physician assistant's findings prior
10 to surgery and did not personally see or examine the patient prior to the surgery or in follow up
11 care when the physician assistant discovered that the primary hernia had not been repaired.

12 c. Respondent dictated a history and physical examination the day before surgery
13 that he never performed.

14 **SECOND CAUSES FOR DISCIPLINE**

15 (Creating a False Medical Record—Patient S.M.)

16 15. The allegations of paragraphs 7 through 12 above are incorporated herein by reference
17 as if fully set forth. Respondent is subject to disciplinary action under sections 2261 and/or
18 2234(e) and/or 2266 of the Code through section 2234, in that he dictated a history and physical
19 examination of S.M. on the day prior to surgery which he did not actually perform. He did not
20 actually see the patient until the morning of the surgery. Respondent therefore created a false
21 medical record which was not an accurate or adequate record of his care and treatment of S.M.

22 **FACTS RE: PATIENT C.B.**

23 16. On August 4, 2011, patient C.B., a six-year old male, was seen in Respondent's
24 medical office in Eureka by referral from C.B.'s primary care physician for evaluation of a
25 possible hernia. C.B. was examined and evaluated by Respondent's physician assistant, who
26 confirmed the presence of an incarcerated umbilical hernia and explained the risks and procedures
27 of surgical repair of the hernia to C.B.'s parents. The proposed surgery was scheduled.
28

1 Respondent did not see or examine C.B. to confirm his physician assistant's findings or consult
2 with C.B.'s parents at this office visit or at any subsequent time prior to the date of surgery.

3 17. C.B. was admitted to a local hospital for the scheduled surgery on the morning of
4 December 21, 2011 at approximately 5:30 a.m. Surgical procedures commenced between 7:30
5 a.m. and 8:00 a.m., and the hernia repair was completed at approximately 8:18 a.m. C.B.'s post-
6 operative recovery was uneventful.

7 18. In a document labeled "History & Physical," dictated by Respondent starting at 12:28
8 a.m. on December 21, 2011, Respondent entered into hospital records clinical information about
9 C.B. that reiterates information obtained by Respondent's physician assistant at C.B.'s initial
10 office visit on August 4, 2011. There is no documentation or insurance charge for a history and
11 physical by Respondent at his office at any time prior to the surgery, and there is no record that
12 supports a separate visit at the hospital to C.B. for the actual conducting of a history and physical
13 examination by Respondent on December 21, 2011 hours prior to the surgery when the patient
14 was not at the hospital.

15 **THIRD CAUSES FOR DISCIPLINE**

16 (Unprofessional Conduct/Gross Negligence – Patient C.B.)

17 18. The allegations of paragraphs 16 and 17, above, are incorporated herein by reference
18 as if fully set forth.

19 19. Respondent is subject to discipline under section 2234(b) and 2234 of the Code by
20 reason of the following acts or omissions:

- 21 a. Respondent failed to confirm his physician assistant's findings prior to
22 scheduling surgery.
- 23 b. Respondent failed to see and clinically evaluate C.B. or consult with C.B.'s
24 parents prior to the day of surgery.
- 25 c. Respondent dictated a history and physical into the hospital records that implied
26 he conducted an examination on C.B. hours before surgery that he could not have performed at
27 the hospital, and his office records have no indication that he saw C.B. at his office prior to
28 surgery.

1 **FOURTH CAUSES FOR DISCIPLINE**

2 (Creating a Misleading/False Medical Record -- Patient C.B.)

3 20. The allegations of paragraphs 16 and 17, above, are incorporated herein by reference
4 as if fully set forth

5 21. Respondent is subject to disciplinary action section 2234(e), and/or 2261, and/or 2266
6 through section 2234 of the Code, in that Respondent's dictation and entry into C.B.'s hospital
7 medical record of a purported history and physical on the morning of surgery was not supported
8 by any actual clinical assessment or evaluation of C.B. proximate to that time. This conduct
9 constitutes creating a false or misleading medical record and/or a dishonest act, and the failure to
10 keep an adequate and accurate medical record.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 (Repeated Negligent Acts -- Patients S.M. and C.B.)

13 22. The allegations of the First and Third Causes for Discipline, above, are incorporated
14 herein by reference as if fully set forth.

15 23. Respondent's conduct with respect to his care and treatment of patients S.M. and
16 C.B., whether jointly, or in any combination thereof, constitutes repeated acts of negligence and
17 therefore, cause for discipline exists under section 2234(c) of the Code.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Medical Board of California issue a decision:

21 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 65321,
22 issued to Michael Anthony Palmer, M.D.:

23 2. Revoking, suspending or denying approval of Michael Palmer, M.D.'s authority to
24 supervise physician assistants, pursuant to section 3527 of the Code;

25 3. Ordering Michael Palmer, M.D., if placed on probation, to pay the costs of probation
26 monitoring; and


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4. Taking such other and further action as deemed necessary and proper.

DATED: November 6, 2014


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant